

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

USA,

No. C 02-40239 SBA

Plaintiff,

**ORDER**

v.

[Docket No. 77]

CLEMENTE ZA VALETA, aka OLIVER  
ESPANOL aka CLEMENTE  
ZARA LE TA,

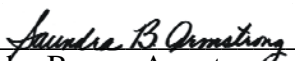
Defendant.

Before the Court is defendant's Motion to Vacate under 28 U.S.C. 2255 (the "Motion") [Docket No. 77] and a supporting letter dated November 5, 2007 (the "Letter") [Docket No. 86]. Defendant argues the Court in amending his judgment on July 26, 2007, *see* Docket No. 76, after the Ninth Circuit vacated his initial judgment and remanded his matter for re-sentencing, *see* Docket No. 61, did not calculate his sentence properly. *See* Mot at 6-8, Letter. Specifically, defendant argues rather than having to serve time through December 2007, the Court should have ordered him released from custody in July 2007. *See id.*

In order to file a motion under 28 U.S.C. § 2255, a plaintiff must be "in custody." 28 U.S.C. § 2255(a). "Custody" includes situations beyond physical confinement, such as parole. *Jones v. Cunningham*, 371 U.S. 236, 239-43 (1963). Nonetheless, in this case, the Clerk of the Court confirmed with the United States Bureau of Prisons that plaintiff was released from federal prison on December 28, 2007. Thus, the Court cannot provide plaintiff with his requested relief of release from prison prior to or during December 2007. The Court thus DENIES his Motion as moot.

IT IS SO ORDERED.

July 9, 2008

  
Sandra Brown Armstrong  
United States District Judge

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